

FILED UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Paco Swain Realty, L.L.C.
a Louisiana Corporation,

Respondent.

§ Docket No. CWA-06-2012-2712
§
§ Proceeding to Assess a
§ Civil Penalty Under Section 309(g)
§ of the Clean Water Act
§
§ Administrative Complaint

I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Administrator delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Water Quality Protection Division of EPA Region 6 ("Complainant"). This Class II Administrative Complaint is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R., §§ 22.1–22.52.

Based upon the following Findings of Fact and Conclusions of Law, Complainant finds that Paco Swain Realty, L.L.C. ("Respondent") violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a limited liability company incorporated under the laws of the State of Louisiana, and as such, Respondent is a "person" as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 232.2.

2. At all times relevant to the violations alleged herein (“relevant time period”), Respondent owned real property located west of Highway 447 in Sections 2 and 11, Township 6 South, Range 3 East and approximately five miles north of Walker, Livingston Parish, Louisiana (“subject property”). The subject property is a subdivision known as Louisiana Purchase Equestrian Estates.

3. On multiple dates between, on or about June 2007 through September 2010, Respondent discharged, caused the discharge, directed the discharge and/or agreed with other persons or business entities to “discharge dredged material” and/or “discharge fill material,” as defined at 40 C.F.R. § 232.2, from point sources, including equipment (e.g. earth moving equipment), in, on and to five wetlands and two tributaries (collectively, “subject wetlands”) within the subject property which were adjacent to, hydrologically connected to, and/or had a significant nexus to a navigable-in-fact body of water named Beaver Branch West Colyell Creek and, therefore, the subject wetlands are considered a water of the United States as that term is defined at 40 C.F.R. § 232.2. This discharge was associated with development of a residential subdivision and was done without authorization under a permit issued by the United States Army Corps of Engineers (“Corps”).

4. During the relevant time period, the subject wetlands referred to in paragraph 3 were “navigable waters” as defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 232.2.

5. The discharged dredged and fill materials referred to in paragraph 3 are considered “pollutants” as that term is defined at Section 502(6) of the Act, 33 U.S.C. § 1362(6).

6. Each piece of equipment used for the discharges referred to in paragraph 3 acted as a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

7. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

8. Under Section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers for the Corps, is authorized to issue permits for the discharge of dredged or fill material into waters of the United States.

9. During the relevant time period, Respondent did not have a permit issued by the Corps that authorized the discharges alleged herein.

10. Each day of unauthorized discharge by Respondent is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

11. On June 12, 2008, the Corps conducted an on-site inspection at the subject property and discovered the filling and/or draining of wetlands without a permit.

12. On August 20, 2008, the Corps notified Respondent of violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a), through a written Cease and Desist Order instructing Respondent to cease unauthorized work at the subject property.

13. On September 9, 2008, Respondent sent a letter to the Corps stating that the impacted wetlands were less than 1/10 of an acre and, thereby, did not require a permit from the Corps.

14. On September 23 and 24, 2010, a contractor working for EPA performed a field evaluation of the subject property. The contractor's report, entitled "Louisiana Purchase Equestrian Estates Wetland Determination Report" ("Report"), determined that 1.35 acres of wetlands and 2,730 linear feet of tributaries have been impacted.

15. The Report also noted that drainage ditches constructed by Respondent have removed historical sources of hydrology and reduced the overall wetlands acreage present at the subject

property. As such, the total area of impacted wetlands is potentially greater than the 1.35 acres of wetlands and 2,730 linear feet of tributaries mentioned in paragraph 14.

16. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A) the Administrator is authorized to assess a Class I or Class II civil penalty whenever, on the basis of any information available, the Administrator finds that a person has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17. Under Section 309(g)(2)(B) Of the Act, 33 U.S.C. § 1319(g)(2)(B), as amended by 40 C.F.R. § 19.4, for the period from March 15, 2004 through January 12, 2009, Respondent is liable for a civil penalty in an amount not to exceed \$11,000.00 per day for each day during which a violation continues, up to a maximum of \$157,500.00. For the period after January 12, 2009, Respondent is liable for a civil penalty in an amount not to exceed \$16,000.00 per day for each day during which a violation continues, up to a maximum of \$177,500.00.

18. EPA has notified the Louisiana Department of Environmental Quality of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of a civil penalty against Respondent.

19. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has notified the public of the filing of this Complaint and afforded the public reasonable opportunity to comment on the proposed penalty. At the expiration of the notice period, EPA will consider any comments filed by the public.

III. PROPOSED PENALTY

20. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 finds that Respondent committed the violations alleged above and proposes to

assess a Class II civil penalty not to exceed the statutory maximum stated in paragraph 17 for each day during which a violation occurred or continued, up to a maximum of \$177,500.00 for the violations alleged in this Complaint.

21. In determining the amount of the civil penalty, EPA will consider the factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), namely, the nature, circumstances, extent and gravity of the violation(s), and, with respect to Respondent's ability to pay a civil penalty, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation(s), and such other factors as justice may require.

IV. FAILURE TO FILE AN ANSWER

22. If Respondent wishes to admit, deny, or explain any material allegation set forth in the above Findings of Fact and Conclusions of Law or contest the amount of the civil penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after Respondent's receipt of the Complaint, regardless of whether Respondent requests a hearing on the allegations of the Complaint.

23. The requirements for an Answer are set forth at 40 C.F.R. § 22.15. Respondent's failure to file an Answer setting forth any such admission, denial, or explanation shall constitute an admission of all facts alleged, and waive Respondent's right to a hearing, pursuant to 40 C.F.R. § 22.15(d).

24. If Respondent fails to file an Answer within thirty days of service of the Complaint, Respondent may be found in default whereby a default order may be issued pursuant to 40 C.F.R. § 22.17. Any default shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such allegations.

25. Respondent must send its Answer, including any request for a hearing, and all other

pleadings to be filed with the Regional Hearing Clerk to:

Lorena Vaughn (6RC-D)
Regional Hearing Clerk
U. S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Tucker Henson (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

26. The Answer must be signed by Respondent's corporate representative or its attorney or other representative, if any, authorized to sign on behalf of Respondent, and include the information required by 40 C. F. R. §§ 22.5 and 22.15. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

27. Respondent may request a hearing to contest any material allegation set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2). The hearing procedures are set forth at 40 C.F.R. §§ 22.21–26.

28. If a hearing is requested, any person who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at the hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. SETTLEMENT

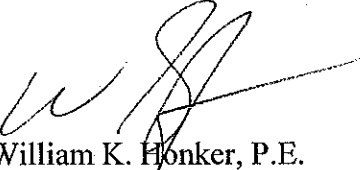
29. EPA encourages all parties against whom civil penalties are proposed to pursue the

possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, a Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Donna Mullins at (214) 665-7576.

30. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer, pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive a Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and request a hearing on the issues raised in the Complaint. Such petition would be granted and hearing held only if the evidence presented by the petitioner's comments was material and not considered by EPA in the issuance of the CAFO.

31. Neither the assessment nor the payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, applicable regulations and permits, and any compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including an order relating to the violations alleged herein.

5/10/12
Issuance date


William K. Honker, P.E.
Acting Director
Water Quality Protection Division

CERTIFICATE OF SERVICE

I certify that on MAY 10 2012 the original and a true and correct copy of this Complaint was filed with the Regional Hearing Clerk, EPA Region 6, and that true and correct copies of the Complaint were deposited with the U. S. Postal Service addressed to the following persons.

Certified mail, return receipt requested:

Mr. Gordon Swain
Paco Swain Realty
9013 Florida Boulevard
Walker, Louisiana 70785



FILED
2012 MAY 15 AM 8:59
REGIONAL HEARING CLERK
EPA REGION VI
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In The Matter Of:	§	Clean Water Act § 309(a)
	§	
Paco Swain Realty, L.L.C.	§	ADMINISTRATIVE ORDER
a Louisiana corporation	§	ON CONSENT
	§	
Respondent.	§	Docket No. CWA-06-2012-2711

I. AUTHORITY

The following findings are made and Administrative Order on Consent issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated this authority to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF VIOLATION

1. Paco Swain Realty, L.L.C. ("Respondent") is a limited liability company incorporated under the laws of the State of Louisiana, and as such, Respondent is "person" as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to the violations alleged herein, Respondent owned real property located west of Highway 447 in Sections 2 and 11, Township 6 South, Range 3 East and approximately five miles north of Walker, Livingston Parish, Louisiana ("subject property"). The subject property is a 200 acre subdivision known as Louisiana Purchase Equestrian Estates.

3. On multiple dates between, on or about June 2007 through September 2010, Respondent and/or other persons or entities acting at Respondent's direction and on its behalf

("Respondent's agents") discharged pollutants from point sources into waters of the United States without a permit issued under the Act. Specifically, Respondent and/or Respondent's agents "discharged dredged material" and "discharged fill material," as those terms are defined by 40 C.F.R. § 232.2, from point sources, including heavy equipment (e.g., earth moving equipment), in, on and to five wetlands and two tributaries within the subject property in connection with the development of a residential subdivision. The impacted wetlands and tributaries were adjacent to, hydrologically connected to, or had a significant nexus to a navigable-in-fact body of water named Beaver Branch West Colyell Creek. The impacted wetlands and tributaries are identified and fully described in a report entitled "Louisiana Purchase Equestrian Estates Wetland Determination Report" (October 18, 2010), a copy of which is attached to this Order

4. The dredged and fill material referenced in paragraph 3 is a "pollutant" as that term is defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

5. Each piece of heavy equipment used to carry out the discharges referenced in paragraph 3 was a "point source" as that term is defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

6. The impacted wetlands and tributaries referenced in paragraph 3 are "navigable waters" as that term is defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" as that term is defined by 40 C.F.R. § 232.2.

7. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the

authorization of, and in compliance with, a permit issued under the Act. Section 404 of the Act, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers ("Corps"), may issue permits for the discharge of dredged or fill material into waters of the United States.

8. Respondent did not have a permit issued by the Corps that authorized the discharges described in paragraph 3 above.

9. Each day of unauthorized discharge is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT

10. EPA and Respondent agree that settlement of this matter without litigation will save time and resources and is in the public interest and that entry into this Order on Consent is the most appropriate means of resolving this matter with respect to Respondent's restoration of certain wetlands as described below. As part of a settlement agreement, Respondent concurs in the issuance of this Order on Consent and agrees to comply with the Order, as set forth in paragraph 11 below.

IV. ORDER

11. Based on the foregoing Findings of Violation and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA orders Respondent to immediately cease any discharge of dredged and/or fill material to waters of the United States. EPA further orders Respondent to submit an application to the Corps for an after-the-fact ("ATF") permit issued under Section 404 of the Act for the unauthorized discharges alleged in this Order within thirty

(30) days of receipt of a signed copy of this Order. If Respondent fails to submit an application for an ATF permit in accordance with this paragraph, EPA orders Respondent to restore the impacted wetlands and tributaries within sixty (60) days of receipt of a signed copy of this Order. If Respondent fails to obtain an ATF permit for any reason, EPA orders Respondent to restore the impacted wetlands and tributaries within forty-five (45) days following Respondent's receipt of notice from the Corps that Respondent's permit application has been denied or is returned to Respondent by the Corps without final action.

V. GENERAL PROVISIONS

12. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 708 of the Administrative Procedure Act, 5 U.S.C. §§ 701–708.

13. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

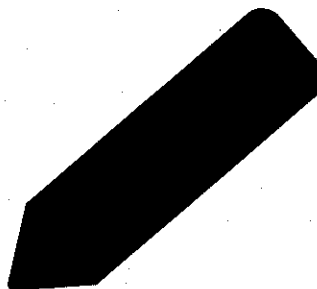
14. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$37,500 per day of violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a

fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.

15. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of its obligation to comply with any applicable federal, state or local law or regulation.

16. The effective date of this Order on Consent is the date a signed copy is received by Respondent.

In recognition and acceptance of the foregoing:



Gordon Swain
Paco Swain Realty, L.L.C.

Date

William K. Honker, P.E.
Acting Director
Water Quality Protection Division
U.S. EPA Region 6

Date